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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,543	06/06/2001	James A. Aviani	CIS01-03(3705)	6900

7590 04/21/2006  
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Westborough, MA 01581

EXAMINER
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BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/875,543

Applicant(s)

AVIANI ET AL.

Examiner

Alina N. Boutah

Art Unit

2143

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

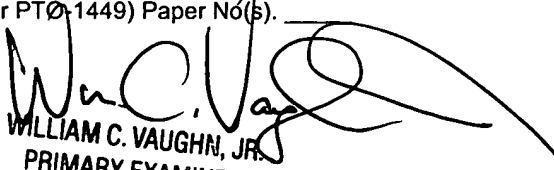
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-50.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No.(s).  
13. ☐ Other: \_\_\_\_\_.

  
WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: As previously presented, in response to Applicant's argument with regards to claim 1, that Ilnicki fails to teach or disclose "providing a data transfer approval to the data access device in response to receiving the first response, the data transfer approval authorizing the data access device to establish the communication connection to the client based on the connection establishment information" the PTO respectfully submits that this is being taught in figure 5 of Ilnicki. Figure 5 illustrates a secure SSL connection between a user terminal (client) and a target server. Here, the user terminal sends a request to a gateway. The gateway authenticates the client, which later allows the client to connect to the target server. In this case, the authentication is interpreted as providing a data transfer approval as claimed by application's invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Regarding claim 3, Applicant argues that the combined references fail to indicate whatsoever that each request includes a request sequence number to distinguish it from other requests. The PTO respectfully submits that the use of sequence numbers is clearly disclosed in Brendel in col. 10, lines 31-32 which states that "a sequence number is also included in the TCP/IP header to keep track of packets received."

Regarding claim 4, Applicant argues that the cited references fail to teach that multiple second requests for a single first request are sent to multiple data access devices and thereafter receiving responses from the multiple data access devices, the PTO respectfully submits that this is being taught in the Brendel as mentioned above in figure 6.

Regarding claim 6, although Brendel does not explicitly teach a current transmit window, a window length, or quantity of data being sent as claimed, although he discloses a frame checksum as well as IP header that may be appended to the data being transmitted (col. 10, line 25-26). One of ordinary skill in the art would recognize that when transmitting a packet, information such as a window size, length, quantity, etc. must be included in the header of the packet. This feature is well known in the art of networking.


Regarding claim 7, figure 4 as well as col. 18, lines 55-67 of Brendel disclose a backup server that serves the clients if the respective server fails.

Regarding claim 9, figure 11A of Brendel illustrates that the load balancer sends the server an acknowledgement that that client receives a message from the server.

Regarding claims 39 and 43, col. 10, lines 30-34 of Brendel teaches utilizing a sequence number for facilitating servicing of multiple requests from the client to the data communication device.

Regarding claim 40, Brendel teaches the load balancer determining which server is best suited to serve a request. Although he does not explicitly teach a bidding process as claimed, the Examiner takes official notice that this feature is well known in the art of networking.

The rejections of claims 23, 29, 35 and 36 are analogous to claim 1, therefore are sustained for the same reason provided above..

  
WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER